

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2006-114651-001 DT

05/18/2016

JUDGE M. SCOTT MCCOY

CLERK OF THE COURT
L. Mitchell
Deputy

STATE OF ARIZONA

JULIE A DONE

v.

ISIAH PATTERSON (001)

SHARMILA ROY

CAPITAL CASE MANAGER
COURT ADMIN-CRIMINAL-PCR
VICTIM WITNESS DIV-AG-CCC

MINUTE ENTRY

At the status conference held on May 11, 2016, the Court orally denied Defendant's Motion for Determination of Competency and for Stay of Proceedings and noted a written ruling would follow. This is that ruling.

The defendant was convicted of first degree premeditated murder and sentenced to death by jury verdict. On automatic appeal, the conviction and sentence were affirmed. State v. Patterson, 230 Ariz. 270, 283 P.3d 1 (2012). The defendant has not yet filed a petition for post-conviction relief. His petition is now due June 7, 2016.

Defendant seeks a determination of competency pursuant to Dusky v. United States, 362 U.S. 402 (1960) and Rule 11 of the Arizona Rules of Criminal Procedure. Defendant further seeks a stay of the post-conviction proceedings pending determination of his competency.

Competency: The Dusky Standard

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As explained by our Supreme Court, the Rule 11 procedures were implemented to ensure compliance with Dusky:

Due process requires that the state “observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent.” *Drope v. Missouri*, 420 U.S. 162, 172, 95 S.Ct. 896, 904 (1975). The inquiry is whether defendant “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational as well as a factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402, 403, 80 S.Ct. 788, 789 (1960).

This court has implemented procedures to assure the competency of criminal defendants. See rule 11, Arizona Rules of Criminal Procedure. An accused has the right to a mental examination and hearing where reasonable grounds for an examination exist. See rule 11.3. Reasonable grounds exist when “there is sufficient evidence to indicate that the defendant is not able to understand the nature of the proceeding against him and to assist in his defense.” *State v. Borbon*, 146 Ariz. 392, 395, 706 P.2d 718, 721 (1985). The trial court has broad discretion in determining whether reasonable grounds exist to order a competency hearing and its decision will not be reversed absent a manifest abuse of discretion. See *State v. Salazar*, 128 Ariz. 461, 462, 626 P.2d 1093, 1094 (1981). Examinations into competency focus “on an extremely narrow issue: whether whatever is afflicting the defendant has so affected his present capacity that he is unable to appreciate the nature of the proceedings or to assist his counsel in conducting his defense.” *State v. Steelman*, 120 Ariz. 301, 315, 585 P.2d 1213, 1227 (1978).

State v. Amaya-Ruiz, 166 Ariz. 152, 161-62, 800 P.2d 1260, 1269-70 (1990).

Competency in Post-Conviction Proceedings (Rule 11)

Defendant concedes that “[w]hether or not Rule 11 applies of its own force to Rule 32 proceedings” has not been resolved in Arizona. Motion at 2. The Court finds that under the facts of this case Rule 11 does not apply

By its terms, Rule 11 provides that “[a] person shall not be tried, convicted, sentenced or punished for a public offense... while, as a result of a mental illness, defect, or disability, the person is unable to understand the proceedings against him or her or to assist in his or her own defense.” Ariz. R. Crim. P. 11.1. The Court identifies also A.R.S. §§ 13-4501, 4502(1), which contains similar language and at 13-4503 also states that “at any time after [charges filed]...any party or the court...may request in writing that the defendant be examined to determine... competency to stand trial, ...enter a plea or to assist the defendant’s attorney.” Rule 11 and the cited statute relate to the post-charging pretrial-through-sentencing determination of competency.

But Defendant has been tried, convicted, sentenced and punished for a public offense, and is currently in the Arizona Department of Corrections pursuing post-conviction relief. He has yet to file a post

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conviction petition (nor have a response and reply been filed) and the Court has not yet determined whether any post conviction claims are colorable.

The only published Arizona decision addressing post-sentencing competence found competency was not required. In *State v. White*, 168 Ariz. 500, 509, 815 P.2d 869, 878 (1991) abrogated [on proportionality grounds] by *State v. Salazar*, 173 Ariz. 399, 844 P.2d 566 (1992), the Arizona Supreme Court held that defendant's incompetence during the appellate process did not violate due process. The Court stated:

Defendant argues that he was denied due process of law because this court refused to order a mental examination after a prima facie showing of incompetency to assist in the appeal. Defendant concedes, however, that a "criminal appeal should proceed even if appellant is incompetent to assist counsel." Defendant appears to raise the issue only to establish the groundwork for possible post-conviction relief.

The Michigan Court of Appeals addressed this issue in *People v. Newton*, 152 Mich.App. 630, 394 N.W.2d 463 (Ct.App.1986), vacated on other grounds, 428 Mich. 855, 399 N.W.2d 28 (1987). The Michigan court concluded that, although the issue was novel, it would be unwise to require that defendant be competent to assist counsel in preparing his appeal. *Id.* at 635–636, 394 N.W.2d at 466. The court reasoned that the only remedy it could fashion would be to suspend defendant's appeal until he regained his competency. *Id.* Because this would work to defendant's detriment, the court held that an appeal should "proceed regardless of a defendant's competency." *Id.* We agree. Suspending the appeal would preclude this court from considering even the most clearly reversible or prejudicial error until the defendant regained competency.

Moreover, we note the American Bar Association's position, as expressed in the ABA Criminal Justice Mental Health Standards (1989). Standard 7–5.4(c) provides that:

Mental incompetence of the defendant during the time of appeal shall be considered adequate cause, upon a showing of prejudice, to permit the defendant to voice, in a later appeal or action for post conviction relief, any matter not raised on the initial appeal because of the defendant's incompetence. (Emphasis added). The Standard contemplates that an appeal proceed despite a defendant's incompetence to assist the appeal. "[C]onvicted defendants, like parties to appellate litigation in general, do not participate in appeal proceedings." *Id.*, Commentary Introduction. Therefore, "mental incompetence rarely affects the fairness or accuracy of decisions." *Id.* Defendant was not denied due process of law.

State v. White, 168 Ariz. 500, 509, 815 P.2d 869, 878 (1991) abrogated [on proportionality grounds] by *State v. Salazar*, 173 Ariz. 399, 844 P.2d 566 (1992).

Nor does incompetency require a stay in federal habeas proceedings. The Court considered the nature of a habeas proceeding, the nature of the claims raised, and the interests of the state. Ryan

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(Gonzales) held that defendant's right to competence derives from the constitutional right to due process rather than from the Sixth Amendment right to counsel, abrogating *Rohan v. Woodford*, 334 F.3d 803 (2013). The U.S. Supreme Court held that a state prisoner does not have a statutory right to competence in habeas proceedings. *Ryan v. Gonzales*, 133 S.Ct. 696 (2013)

Defendant's premise – that “[a] Rule 32 proceeding is more akin to a trial than an appeal” (Motion at 4) – is faulty. An appeal is based on the Court's rulings at trial; a post-conviction proceeding is, most typically, based on trial counsel's actions at trial. Both are record-based, focusing on the proceedings at trial. Only where a defendant raises claims that the reviewing judge finds to be colorable do certain rights arise, such as to seek discovery in order to supplement the record. See *Canion v. Cole*, 210 Ariz. 598, 601, ¶ 18, 115 P.3d 1261, 1264 (2005) (“Because no petition has been filed, Canion has neither established good cause for discovery nor made a colorable claim that he is entitled to post-conviction relief. Like others who seek Rule 32 relief, Canion must file his petition, complete with affidavits and relevant portions of the record that establish a ground that would provide a basis for relief under Rule 32.”)

Rule 32 governs defendant's entitlement to post-conviction relief. *Canion v. Cole*, 210 Ariz. 598, 599, 115 P.3d 1261, 1262 (2005). Canion held that Rule 32 itself does not provide a process for obtaining Rule 15.1 discovery in PCR proceedings. *Id.* Similarly, the Court finds that Rule 32 does not provide a process for determining a defendant's competence under Rule 11 in PCR proceedings.

The PCR is not a new trial, but is simply a review of the record in accordance with Rule 32.1. Reviewing the record and interviewing trial counsel may disclose many issues (especially as to IAC, which is the most frequent allegation.) To the extent that additional issues may be discovered at a later date and the defendant is able to establish grounds under Rule 32.2(b) sufficient to permit a successive petition, the defendant has a remedy and may seek permission to file a successive petition.

Ability to Assist Counsel

The Motion and Reply say that Defendant is unable to assist counsel, but they are silent regarding what assistance he might provide. Counsel now says that Defendant has been unable to assist in the reinvestigation of the guilt phase, but still gives no hint regarding what help he could possibly render. Indeed, the evidence at trial was that:

At approximately 1:30 a.m. on March 17, 2006, Patterson and Consquelo, his girlfriend, were in his Mesa apartment with their three-year-old son when they began fighting. A downstairs neighbor heard loud crashes and things rolling on the floor. After about ten minutes, the noises stopped. After another ten minutes or so had passed, Consquelo ran from the apartment, naked and screaming for help.

Patterson chased Consquelo through the outdoor common areas of the apartment complex. He caught her at a sand volleyball pit, sat over her, and stabbed her thirteen times in the face, torso, and arm. The wounds perforated her lungs, diaphragm and spleen, and fractured her arm. Patterson continued

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stabbing Consuelo until a neighbor, awakened by her screams, yelled for him to stop. Consuelo then stumbled from the volleyball pit, asking for help before collapsing beneath a bush, where she died. Patterson walked back toward his apartment, telling neighbors, "That's what happens when you try to turn a whore into a housewife."

State v. Patterson, 230 Ariz. 270, ¶¶ 2-3, 283 P.2d (2012) (footnote omitted).

The Court finds Defendant's asserted lack of competency is not an impediment to this proceeding. Defendant is represented by counsel. The current posture of the case requires filing a petition after reviewing the trial record. Filing the petition can be accomplished by counsel with legal training, the ability to conduct legal analysis and the ability to file pleadings. There is no indication that Defendant's assistance at this stage of the proceedings is essential.

Once complete, the Court will review the pleadings to identify those claims that may be precluded and those that are colorable. In making its determination, the Court will review "the petition, response, reply, files and records" to initially "identify all claims that are procedurally precluded" and then "after identifying all precluded claims, [the Court] determines" whether the remaining claims are colorable, whether they present a material issue of fact or law such that an evidentiary hearing is required or whether the claims are not colorable and the petition is dismissed. Rule 32.6, Ariz.R.Crim.P. Again, Defendant's assistance in conducting the review whether competent or incompetent, is not necessary.

The Court finds that at this stage of the current proceedings Defendant's competence is not necessary to assist PCR counsel or the Court.

The Court finds that Defendant does not have a right to a competency determination under Rule 11 or A.R.S. §13-4501 et seq. at this point in a post-conviction proceeding.

The Court further finds that Dusky is not implicated at this point in the post-conviction proceedings.

Victim's Rights

The Court's findings advance the matter toward eventual resolution, recognizing the victim's rights to a speedy trial (resolution) without adversely affecting the defendant's rights. A.R.S. §13-4435(A); Rule 39(b)(15) ("[A victim's rights include:] The right to a speedy trial or disposition and prompt and final conclusion of the case after conviction and sentence.")

The Court finds that issuance of an indefinite stay to resolve competency at this stage of the proceedings would be detrimental to the State, the defendant and any victims.

The Dubious Circumstances of This Request

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Regrettably, the Court finds the timing of the Motion dubious, something made all the clearer by an extended review of the record:

- The Arizona Supreme Court affirmed Defendant's conviction and sentence in 2012.
- By the end of 2013, Defendant's first post-conviction counsel sought to withdraw because Defendant failed to cooperate with, and was hostile towards, experts and his defense team.
- No later than January 2015, current counsel was aware that Defendant's mental status continued to be problematical: "It has been difficult for the defense team to pierce the veil of paranoia in Mr. Patterson's mind and to extract sufficient information from him to assist in formulating theories of the case." Motion for Extension of Time to File Petition for Post-Conviction Relief, filed January 23, 2015, at 2.
- Dr. Toma contemporaneously opined that Defendant was not competent. Toma Interim Report, at 6 ("In my opinion, he is not competent to assist Ms. Roy in the current legal proceedings. He will need [unspecified] psychiatric treatment to become competent.")
- During a February 2015 visit with Dr. Toma, Defendant, "spent an inordinate amount of time trying to get me to agree that his current legal team, including his attorney, were in a 'conspiracy' with his previous legal teams." Id.
- In May 2015, counsel acknowledged receipt of draft reports from "mental health experts regarding [Defendant's] lack of competency to assist," and promised to file a Rule 11 motion within days. Motion for Extension of Time to File Petition for Post-Conviction Relief, filed May 22, 2015, at 2. No such motion was filed.
- Since this Division took over management of this matter in August 2015, nothing has been written indicating a competency exam was necessary or even contemplated to prepare the post-conviction petition. Reports have, instead, indicated progress in the investigation and other work regarding both guilt phase and penalty phase
- Counsel raised the competency issue only at the end of April 2016, more than 16 months after being aware of Defendant's mental health issues and nearly a year after promising a different judge to file a motion, and only when counsel faced deadlines in two other Rule 32 matters and unexpected resentencing proceedings in others.

In short, the Court finds the pending request appears to have less to do with Defendants competency and inability to help counsel than it does with the press of counsel's other matters.

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CONCLUSION

Neither Rule 11 of the Arizona Rules of Criminal Procedure nor A.R.S. §13-4501 et seq. provides authority for addressing Defendant's competency in his post-conviction proceedings.

Defendant has not established that his assistance is required at the stage at which the post-conviction proceedings are currently postured.

Finally, the Court finds that issuance of an indefinite stay would be detrimental to the State, Defendant and any victims.

Based on the above,

IT IS ORDERED denying Defendant's Motion for Determination of Competency and for Stay of Proceedings.

IT IS FURTHER ORDERED denying counsel's Motion to Withdraw.

Because the Court has encountered unexpected delays in rendering this ruling,

IT IS FURTHER ORDERED that Defendant's petition be filed on or before June 14, 2016.